



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 29, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0699

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies	Sustained
# 2	6.180 - Searches-General POL - 2- Consent Searches 1. Officers Conducting a Consent Search Will Ask the Consenting Person to Sign	Sustained
# 3	6.180 - Searches-General POL - 2- Consent Searches 2. The Validity of the Consent Depends on Consent Being Given Voluntarily	Sustained
# 4	6.180 - Searches-General 6.180 – POL – 4 Open View and Plain View Doctrines	Sustained
# 5	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report: All reports must be complete, thorough and accurate	Sustained

Imposed Discipline

Resigned Prior to Proposed DAR

Named Employee #2

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies	Sustained
# 2	6.180 - Searches-General POL - 2- Consent Searches 1. Officers Conducting a Consent Search Will Ask the Consenting Person to Sign	Sustained
# 3	6.180 - Searches-General POL - 2- Consent Searches 2. The Validity of the Consent Depends on Consent Being Given Voluntarily	Sustained
# 4	6.180 - Searches-General 6.180 – POL – 4 Open View and Plain View Doctrines	Sustained
# 5	11.020 - Transportation of Detainees 1. Employees Will Take Reasonable Steps to Ensure the Safety of a Detainee in Their Custody	Not Sustained (Training Referral)



# 6	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report: All reports must be complete, thorough and accurate	Sustained
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Imposed Discipline

Written Reprimand

Named Employee #3

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies	Sustained
# 2	6.180 - Searches-General POL - 2- Consent Searches 1. Officers Conducting a Consent Search Will Ask the Consenting Person to Sign	Sustained
# 3	6.180 - Searches-General POL - 2- Consent Searches 2. The Validity of the Consent Depends on Consent Being Given Voluntarily	Sustained
# 4	6.180 - Searches-General 6.180 – POL – 4 Open View and Plain View Doctrines	Sustained
# 5	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report: All reports must be complete, thorough and accurate	Sustained

Imposed Discipline

Suspension Without Pay – 5 Days

Named Employee #4

Allegation(s):		Director's Findings
# 1	6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies	Sustained
# 2	6.180 - Searches-General POL - 2- Consent Searches 1. Officers Conducting a Consent Search Will Ask the Consenting Person to Sign	Sustained
# 3	6.180 - Searches-General POL - 2- Consent Searches 2. The Validity of the Consent Depends on Consent Being Given Voluntarily	Sustained
# 4	6.180 - Searches-General 6.180 – POL – 4 Open View and Plain View Doctrines	Sustained
# 5	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report: All reports must be complete, thorough and accurate	Sustained

Imposed Discipline

Resigned Prior to Proposed DAR

Named Employee #5

Allegation(s):	Director's Findings
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# 1	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that Named Employees #1 through #4 engaged in an improper search and seizure, as well as failed to complete reports that were complete and accurate. The Complainant further alleged that Named Employee #5 may have been dishonest and unprofessional when he told investigators that there was no video relating to the case.

SUMMARY OF INVESTIGATION:

OPA received a complaint from the then First Assistant United States Attorney for the United States Attorney's Office for the Western District of Washington ("USAO"). The complaint stemmed from a January 28, 2018 incident, during which Named Employee #1 (NE#1), Named Employee #2 (NE#2), Named Employee #3 (NE#3), and Named Employee #4 (NE#4) were involved in the search of a residence. As outlined below, the Complainant identified several concerns with the officers' conduct and, most notably, the warrantless search that they conducted. Ultimately, the USAO self-suppressed the evidence seized from the residence.

First, the Complainant alleged that the Named Employees may have made statements to a female resident – referred to here as the Subject – that coerced her to consent to the search, including not honoring her requests for an attorney. Second, the Complainant alleged that the officers believed that the Subject could be high, which would have served to eliminate her ability to consent to the search. Third, the Complainant contended that, even with the lack of explicit consent, the officers conducted a search of the residence. In addition, there was no indication that the officers provided the Subject with Ferrier warnings. Fourth, the Complainant alleged that the officers' reports concerning this incident had numerous omissions. The Complainant asserted that these largely consisted of the absence of facts relating to statements made prior to and after the Subject led the officers through the house and this information was relevant to the validity of the consent to search. Fifth and last, the Complainant asserted that Named Employee #5 (NE#5) may have provided incomplete and/or dishonest information when he informed Postal Inspectors that there was no Body Worn Video (BWV) or In-Car Video (ICV) associated with the incident.

During its investigation, OPA reviewed the documentation completed concerning this incident. The reports all generally referenced the Subject admitting that the male resident was involved in narcotics activity and showing them where the narcotics were located. None of the reports mentioned that the searches were conducted without a consent to search form being completed, the Subject's statement that she took two Xanax, or that numerous areas of the residence and objects were searched without first obtaining valid consent or a warrant.

OPA further determined that there was, in fact, video of this incident. OPA reviewed that video, which is detailed below.



A. Video Review

The officers were initially dispatched to a shots fired call in North Seattle. They could not locate anyone in the intersection where the shots were reported to have been fired. They were subsequently provided with an updated location, which was the residence in question.

The officers arrived at the residence and were invited inside by the Subject. The officers separated the Subject from a male resident who was also inside and interviewed them. The Subject indicated that a third party who had been stalking her came to the door and said that she had to come with him. He brandished a gun. The Subject believed that the third party then fired a warning shot. The Subject also disclosed that her phone was damaged during an argument with the male resident.

Officers also spoke with the male resident. He also stated that the third party was stalking the Subject. He answered the door and saw the third party with two guns. The third party told the male resident that the Subject was leaving with him and the male resident said that she could do so. He told the officers that the third party then fired one of the guns in the air.

NE#3 asked the male resident whether the Subject was high and what she was using. The male subject said that she used Xanax. NE#3 then walked over to the Subject and asked her if she was high. She responded by saying "what" but not answering the question. NE#3 told her that he thought the dispute was narcotics related and the Subject said that she would not have called the police if that was the case.

The Subject told the officers that she felt that they were trying to trick her and said that she did not commit a crime. She said that she did not want to get anyone in trouble, including the third party, and asked whether she needed to keep talking to officers. NE#3 asked to see the Subject's cell phone to read messages between her and the third party and to determine the third party's phone number. The Subject refused to provide him with access. NE#3 told her that they were trying to locate and arrest the Subject and that, if she hindered their investigation, she could be arrested. She then provided NE#3 with the third party's phone number.

NE#3 walked into the kitchen area and observed a white substance on the stove top. He asked NE#1 whether he had looked there and, when NE#1 said no, told him to do so. The Subject began walking into a bedroom and NE#3 followed her, telling her that he was doing so for "officer safety." NE#1 and NE#2 inspected the white substance. They asked the male resident if they could test it and he said yes. He told them that it was "sugar."

While in the bedroom, NE#3 again asked to see the Subject's texts. The Subject said that she did not want to show them because she felt that they would incriminate her. NE#3 told her: "we're not going to do anything with you" and promised not to take action towards her. She then showed him the text messages. The Subject told NE#3 and NE#1, who had since entered the room, that she was arguing with the male resident and the third party offered to go on a walk with her. However, the male resident prevented her from leaving the residence.

NE#3 left the bedroom and NE#1 stayed with the Subject. NE#3 walked into the kitchen where he again inspected the oven. He further inspected a cookie sheet on top of the oven and also opened the oven door, the microwave door, and a lower cabinet and looked inside of each. NE#3 came back into the bedroom and picked up a broken cell phone. The Subject told him that it was damaged by the male resident who did not want her communicating with the third party. NE#3 asked the Subject what was on the stove and she replied that she was baking a cake. NE#1 left



the room. The Subject, who had been sitting on a bed, got up and moved as if to leave the room. NE#3 told her to stay there. As she attempted to sit back on the bed, she fell off and was helped up by NE#3. Prior to the Subject sitting back down on the bed, NE#3 pulled the sheet back, revealing a sum of money. The Subject tried to cover it with the sheet.

NE#3 told the Subject to stop “bs’ing” them and began to question her about the male resident. She acknowledged taking two Xanax but said that they did not come from the male resident. NE#3 questioned the Subject about the money and what she and the male resident did. The Subject asked if they were in trouble and NE#3 said that they were still investigating the shot that was fired. NE#1 returned to the bedroom. The Subject told the officers that she did not have any further information and that the officers could not continue to stay at the residence if she did not know anything else. At this same time, NE#2 entered the spare bedroom and looked inside of the closet.

NE#1 informed NE#3 of a negative test of the white substance and began examining something behind the headboard of the bed using his flashlight to do so. He then gave a container of liquid that he recovered to NE#3 and noted that he was running out of testing kits. The Subject told the officers that the liquid in the container was coconut oil. The Subject left the bedroom to get a towel to clean up a spill. At that time, NE#3 looked under the mattress of the bed. She returned to the room and NE#1 questioned her about a potential domestic violence incident between her and the male resident. NE#3 began looking in the room and in a closet. He took a bag out of the closet and looked inside. She asked NE#3 why he was looking through her things and he gave her the bag. She told him that the officers were investigating the shooting and he replied that this was why he returned the bag to her.

NE#3 stepped into another bedroom and looked around. The Subject told NE#3 that she did not give him permission to look inside of closets. NE#3 said that the closets were open, and he was not digging around in them. He began to question the Subject about a text in which the third party wrote that he would “tell” on the Subject and the male resident. The Subject said that she did not want to discuss it as it would incriminate her. NE#1 questioned her about the third party, and she declined to provide information, including about the third party’s car. NE#1 indicated that she was “borderline obstructing” by failing to provide that information and NE#3 said that it was needed for “officer safety.”

NE#1 continued to question the Subject about the potential domestic violence incident between her and the male resident. Ultimately, based on the information she provided, NE#1 established probable cause to place the male resident under arrest. The male resident was taken into custody and seated in a patrol vehicle by NE#1 and NE#2. NE#2 remained with the male resident for a period of time but then left and returned to the residence, leaving the male subject in the rear of the patrol vehicle.

At this same time, NE#3 observed a scale that was in the kitchen and opened the pantry and again opened the refrigerator. NE#2 also looked through a kitchen cabinet and NE#4 searched the freezer with NE#3. NE#1 came into the kitchen and asked the officers whether they were going to write up a search warrant for the residence. No one answered his question.

NE#3 returned to the bedroom where he again looked in the closet. He searched the closet, including looking at items on shelves and into bags. He looked in between the mattresses and in dresser drawers. He then entered the bathroom where he searched under the sink.



NE#3 walked into the main area and began to look through a plastic bag in the dining room. He asked the Subject why they had so much Fed Ex in the house and the Subject said that the male resident had a mailing business. The Subject told NE#3 that an invitation into the house did not mean permission to look through everything. He said that he was not looking through everything. NE#3 began to question the Subject about items he found in the freezer. The Subject said that she should have a lawyer because she was probably going to incriminate herself. She told NE#3 that she would not sign a consent to search form and asked if she would be arrested. NE#3 told her that she had two options. First, the officers could get a search warrant and anything they found would be “pinned” on her and the male resident. Second, she provides consent. She was told to make a decision.

NE#3 stated that he needed to make a phone call. The Subject told the officers to leave and NE#3 responded: “No, we’re holding this now.” He then called a Sergeant. He told the Sergeant that they had stumbled on a crime lab. He said that they were not searching the home and that everything was in plain view. NE#3 returned inside of the home and began to photograph inside. He opened a cabinet, looked into a pot, read documents on a coffee table, looked in a bag, and inspected items on the mantelpiece. He further looked in the kitchen cabinet and read documents all while the other officers were present. NE#4 also inspected and read documents that were on the table.

At that point, approximately 25 minutes after he had been placed in the patrol vehicle, the male resident was transported from the scene to the precinct by NE#1. He had been left unattended in the rear of the patrol vehicle for around 11 minutes.

The Subject asked if the house was going to be searched. NE#3 told her that a warrant would allow them to “tear this house up.” NE#3 told the Subject that she would be advised of her Miranda warnings if she was willing to cooperate. She appeared unsure whether to cooperate. She was provided Miranda warnings and said she understood. She stated that she would need to get an “expensive” lawyer and that she could not afford that right now. NE#3 told her that they were not there yet and that she needed to tell them what was going on and then show them where the narcotics were.

She stated that the officers were going to find it anyway and NE#3 told her that, by telling them the location, it would save everyone “time and patience.” She asked how much time she would get for a large quantity of narcotics. She told the officers that they could not go into the garage, but NE#3 told her that she had control of the home and could take them inside. NE#3 asked her what types of drugs would be found and she said heroin. She stated that she should not be talking to the officers further. NE#1 asked whether the drugs belonged to her or the male resident. The Subject told the officers that she was easily manipulated, and NE#3 said that they were not trying to manipulate her. The Subject asked whether she could call a lawyer. NE#3 told her that if she did so they would be “done” and could not talk further. The Subject then walked the officers through the house and into the garage. NE#3 searched the garage, including the trunk of a car that was inside. No narcotics were found.

The Subject said that she believed that the narcotics were in Fed Ex packages that were inside of the garage. NE#2 asked her to check in the package. NE#3 told her that he needed her to open the package and she did so. Narcotics were secreted inside. NE#3 returned to the house where NE#4 had remained. NE#3 called his Sergeant and updated him that, while photographing the scene, the Subject decided to confess and admit that the male resident was a drug dealer and walked them to the drugs. NE#3 told the Subject that she needed to give a statement. She was reluctant to do so because of the possibility that she could incriminate herself. NE#3 spent time trying to convince her to do so.



Detectives from the Major Crimes and Narcotics Units responded to the residence and took over the investigation. NE#2 remained with the Subject. She was later transported to the precinct by NE#2 and NE#3 where she was interviewed and then released.

B. OPA Interviews

The Complainant described that the USAO initiated the prosecution of the male resident for narcotics crimes. NE#5 was the SPD liaison on the case. NE#5 provided a number of documents and other materials but did not turn over any BWV or ICV. The male resident's attorney later told the USAO that BWV existed and that he had watched it. The Complainant noted that none of the Named Employees' reports referenced whether there was BWV or ICV. Moreover, she stated that NE#5, who was not present for the search and completed his report after the fact, wrote that there was no BWV or ICV from the scene. He repeated this assertion when later queried by United States Postal Inspectors. However, one of the Postal Inspectors was later able to obtain the BWV directly from SPD.

The Complainant identified an Assistant United States Attorney as another primary source of information concerning this matter. This Assistant United States Attorney confirmed that two Postal Inspectors spoke to NE#5 about the existence of BWV and that he told both of them that there was none. She stated that these were phone calls and provided the identities of the Postal Inspectors.

OPA interviewed both Postal Inspectors. Postal Inspector #1 told OPA that he was informed of the male resident's arrest by SPD and was told that NE#5 was assigned as the SPD liaison. He said that he called NE#5. Approximately two weeks later, NE#5 called him back and said that Postal Inspector #1's assistance was no longer needed. He described NE#5 and another SPD Detective as being dismissive. He did not work on the case until he was notified of a subsequent arrest of the male resident by the Mukilteo Police Department. At that time, he learned that the male resident was working with SPD as a confidential informant as a result of his January 2018 arrest. The cases were ultimately reassigned to Postal Inspector #2. He said that he did not have any conversations with NE#5 about the existence of video.

Postal Inspector #2 was aware of the January 28 incident. He began working on the case involving the male resident's subsequent arrest and planned to combine the two arrests together to seek a plea agreement. He sought records from NE#5 and received some. He noted that the report did not have the BWV/ICV field checked so he assumed that there was no video. The USAO was subsequently contacted by the male resident's attorney who indicated that there was, in fact, video. During a phone call on July 28, 2020, Postal Inspector #2 asked NE#5 whether there was video, and NE#5 told him that he did not believe that video of the search warrant execution existed and that the detectives were not assigned BWV. Postal Inspector #2 did not think that he asked NE#5 to search for the video and did not tell him that the defense attorney had notified him of the video. Postal Inspector #2 subsequently obtained the video through SPD. Postal Inspector #2 did not believe that NE#5 maliciously withheld information concerning the BWV.

Lastly, OPA interviewed NE#2, NE#3, and NE#5. NE#1 and NE#4 left the employ of SPD during the pendency of this investigation and did not agree to participate in interviews.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1



6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies

SPD Policy 6.180-POL-1 sets forth the general requirement that searches may only be conducted pursuant to a search warrant unless an exception to the warrant requirement applies. Included as examples of such exceptions are consent, plain and open view, and exigent circumstances.

Here, the video conclusively established that the officers did not have a warrant at the time they began to search the residence. As discussed more fully below, the officers did not have valid consent, NE#3 engaged in actions that were coercive, they did not provide Ferrier warnings or have the Subject execute a Consent to Search Form, and they improperly searched items that were not in plain view. The totality of their actions violated a number of SPD policies, including the policy set forth in this allegation.

NE#1 and NE#4 declined to participate in this investigation; however, NE#3 acknowledged that he and other officers made bad decisions during this incident and exercised poor judgment. OPA concurs and finds that this is an understatement of how problematic this incident was. Indeed, virtually every aspect of the officers' actions were inconsistent with law and policy from the outset. Moreover, these were not esoteric concepts that the officers were required to apply in a chaotic circumstance, the officers violated black letter law taught in the academy concerning constitutional searches and seizures. There is simply no excuse that OPA can find for the scope of these failures.

In assessing the officers' conduct, OPA notes that NE#3's actions were the most concerning. However, NE#1, NE#2, and NE#4 all conducted improper searches, as well as were present for virtually the entirety of the incident and witnessed numerous acts of misconduct but did and said nothing. Based on this, OPA holds them all equally responsible. In addition, while NE#4 was a student officer at the time, OPA finds that he should be held accountable for his participation in this case given the significance of the violations and the fact that he was well aware of the legal and policy parameters governing search and seizure.

Accordingly, OPA recommends that this allegation be Sustained as against NE#1, NE#2, NE#3, and NE#4.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

6.180 - Searches-General POL - 2- Consent Searches 1. Officers Conducting a Consent Search Will Ask the Consenting Person to Sign

SPD Policy 6.180-POL-2(1) requires officers who are conducting a consent search to ask the consenting person to sign a Consent to Search Form. In addition, Washington law further requires that, as part of this process, officers provide Ferrier warnings. These warnings include advising the resident that they can refuse to consent, they can revoke consent at any time, and that consent can be limited to certain portions of the home. *See State v. Ferrier*, 136 Wn.2d 103, 118-19, 960 P.2d 927 (1998).

The officers purportedly conducted the search of the residence based on consent provided by the Subject. However, none of the officers had her sign a Consent to Search Form prior to the search or even notified her that such a form existed. This was the case even though she told the officers multiple times that she did not want them to search the



home and raised concerns with their warrantless inspections of items and areas within. Moreover, none of the officers provided the Subject, or for that matter the male resident, with Ferrier warnings.

The totality of this conduct violated policy and OPA recommends that this allegation be Sustained as against NE#1, NE#2, NE#3, and NE#4.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

6.180 - Searches-General POL - 2- Consent Searches 2. The Validity of the Consent Depends on Consent Being Given Voluntarily

SPD Policy 6.180-POL-2(2) discusses when consent is valid and instructs officers that it depends on consent being given voluntarily. The policy explains that: "The age, capacity for understanding, and education of the person are scrutinized by the court, as is the totality of the circumstances, including actual or perceived physical and mental coercion, exploitation and the authority of the person to give consent." The policy further instructs that: "Prior to conducting a consent search, officers are required to make a good faith effort to determine whether the consenting person has capacity to provide consent."

Based on a review of the BWV, it is clear that the Subject was impaired at the time of the search and that she could not have provided voluntary consent as a matter of law. The officers were aware of this given her statement that she had taken two Xanax, her slow manner of speech and overall affect, and, as described by NE#3, the pinpoint nature of her eyes that indicated impairment. However, they proceeded with a "consent" search regardless.

Coupled with the Subject's legal inability to provide consent is the fact that NE#3 made repeated comments to the Subject that were coercive. These comments included but were not limited to: telling the Subject, after she asked whether she would be arrested if she provided consent, that she had only had two options – one of which was the officers obtaining a search warrant and then pinning all evidence found on her and the male resident and the other was her consenting; telling the Subject, after she again raised the concern that she would be arrested if she consented, that she had to make a decision "now"; telling her that, if she did not consent, the officers would get a warrant and "tear this house up"; telling the Subject, after she referenced not being able to afford an attorney, that they would "save time," that she would not go to jail if she consented, and that, if she did not cooperate, everyone would go to jail; and telling the Subject, when she again referenced an attorney and her concern that she would go to jail if she consented, that, if she sought an attorney, they would be "done" with cooperating and that she would save "a lot of time, pain, misery, and trouble" if she showed them where the narcotics were. Even more egregious was the fact that these comments were made after multiple instances of the Subject referencing getting a lawyer, saying that she did not want to consent and to speak with the officers, asking them to leave her home, and expressing her concern that she would go to jail if she consented.

While NE#3 bears predominant responsibility for this violation, all of the officers witnessed significant portions but did nothing. As such, they contributed to the failure to abide by policy.

OPA accordingly recommends that this allegation be Sustained as against NE#1, NE#2, NE#3, and NE#4.

Recommended Finding: **Sustained**



Named Employee #1 - Allegation #4

6.180 - Searches-General 6.180 – POL – 4 Open View and Plain View Doctrines

SPD Policy 6.180-POL-4 outlines the open view and plain view exceptions to the warrant requirement. Relevant to this case, plain view applies: “when the police inadvertently discover contraband or evidence after making a lawful intrusion into a constitutionally protected area, such as a residence or a vehicle. The contraband or evidence must be immediately recognizable as such and be in plain view.” As indicated in the policy: “The key to the plain view doctrine is being in the protected place with consent or on legitimate police business.”

The only search conducted by the officers that was even arguably permitted by the plain view doctrine was their observation of the white powder on the top of the oven. However, even this search was questionable. Most notably, it is unclear why the kitchen of the residence was a place where the officers had legitimate police business. No crime occurred in the kitchen and they were not walked into the kitchen by the Subject or the male resident.

Moreover, opening and examining closets, drawers, and cabinets, looking through bags, and reading mail and other items all violated the plain view doctrine. All were intentional rather than inadvertent searches that were improper.

For these reasons, OPA recommends that this allegation be Sustained as against NE#1, NE#2, NE#3, and NE#4.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #5

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report: All reports must be complete, thorough and accurate

SPD Policy 15.180-POL-5 requires that officers document primary investigation on a report. The policy further instructs that all reports must be complete, thorough, and accurate.

A review of the officers’ reports indicates that all of them failed to describe: the Subject’s condition and ability to provide voluntary consent; the Subject’s repeated statements concerning a lawyer, her asking the officers to leave, her articulated concerns that her cooperation would result in her arrest, and her explicit refusal to provide consent to search; the fact that consent was never sought from the male resident; the fact that neither the Subject nor the male resident were provided with a Consent to Search Form or read Ferrier warnings; the extent of the warrantless searches conducted, including into closets, drawers, cabinets, kitchen appliances, and bags; and the testing of substances within the residence. As a general matter, each of the officers failed to provide a detailed recounting of the entirety of the searches they conducted and the justifications for each. To the contrary, the reports inaccurately characterized the search as being legally justified by consent provided by the Subject. This was simply inconsistent with the evidence.

OPA finds that these reports were so deficient that they violated policy. Accordingly, OPA recommends that this allegation be Sustained as against NE#1, NE#2, NE#3, and NE#4.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1



6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Sustained.

Recommended Finding: Sustained

Named Employee #2 - Allegation #2

6.180 - Searches-General POL - 2- Consent Searches 1. Officers Conducting a Consent Search Will Ask the Consenting Person to Sign

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Sustained.

Recommended Finding: Sustained

Named Employee #2 - Allegation #3

6.180 - Searches-General POL - 2- Consent Searches 2. The Validity of the Consent Depends on Consent Being Given Voluntarily

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Sustained.

Recommended Finding: Sustained

Named Employee #2 - Allegation #4

6.180 - Searches-General 6.180 – POL – 4 Open View and Plain View Doctrines

For the same reasons as stated above (see Named Employee #1 – Allegation #4), OPA recommends that this allegation be Sustained.

Recommended Finding: Sustained

Named Employee #2 - Allegation #5

11.020 - Transportation of Detainees 1. Employees Will Take Reasonable Steps to Ensure the Safety of a Detainee in Their Custody

SPD Policy 11.020-POL-1 requires that SPD employees take reasonable steps to ensure the safety of a detainee in their custody.

Here, NE#1 and NE#2 placed the male resident in the rear of the patrol vehicle and NE#1 returned inside of the residence while NE#2 waited at the patrol vehicle. NE#2 then left the patrol vehicle, with the male resident still inside, and re-entered the residence. The male resident was left in the patrol vehicle for approximately 11 minutes prior to being transported from the scene to the precinct.



At his OPA interview, NE#2 acknowledged that he deviated from policy by leaving the male resident in the patrol vehicle unattended for an extended amount of time. NE#2 stated that he did not know what he was thinking at the time; however, he noted that the male resident did not complain of pain or discomfort and there was no reason for NE#2 to believe that there was any potential danger with leaving the male resident alone in the patrol vehicle. He said that he would handle this incident differently now and would not engage in the same conduct.

OPA concurs that NE#2's actions were contrary to policy. That being said, OPA concludes that this constituted minor misconduct. Moreover, here, unlike with the above allegations, OPA finds NE#2's status as a student officer in his second rotation to be relevant. Lastly, it is clear that NE#2 recognizes what he did wrong and has learned from this incident. Accordingly, OPA feels that a Training Referral is the appropriate result.

- **Training Referral:** NE#2 should be reminded of the requirement that he ensure the safety of detainees in his custody and that he avoid leaving detainees unattended in patrol vehicles for extended periods of time. This retraining and any associated counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #6

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report: All reports must be complete, thorough and accurate

For the same reasons as stated above (see Named Employee #1 – Allegation #5), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #1

6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #2

6.180 - Searches-General POL - 2- Consent Searches 1. Officers Conducting a Consent Search Will Ask the Consenting Person to Sign

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #3 - Allegation #3

6.180 - Searches-General POL - 2- Consent Searches 2. The Validity of the Consent Depends on Consent Being Given Voluntarily

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Sustained.

Recommended Finding: Sustained

Named Employee #3 - Allegation #4

6.180 - Searches-General 6.180 – POL – 4 Open View and Plain View Doctrines

For the same reasons as stated above (see Named Employee #1 – Allegation #4), OPA recommends that this allegation be Sustained.

Recommended Finding: Sustained

Named Employee #3 - Allegation #5

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report: All reports must be complete, thorough and accurate

For the same reasons as stated above (see Named Employee #1 – Allegation #5), OPA recommends that this allegation be Sustained.

Recommended Finding: Sustained

Named Employee #4 - Allegation #1

6.180 - Searches-General 1. Officers May Only Make Searches Pursuant to a Search Warrant, Unless a Specific Exception Applies

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Sustained.

Recommended Finding: Sustained

Named Employee #4 - Allegation #2

6.180 - Searches-General POL - 2- Consent Searches 1. Officers Conducting a Consent Search Will Ask the Consenting Person to Sign

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Sustained.

Recommended Finding: Sustained

Named Employee #4 - Allegation #3



6.180 - Searches-General POL - 2- Consent Searches 2. The Validity of the Consent Depends on Consent Being Given Voluntarily

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Sustained.

Recommended Finding: Sustained

Named Employee #4 - Allegation #4

6.180 - Searches-General 6.180 – POL – 4 Open View and Plain View Doctrines

For the same reasons as stated above (see Named Employee #1 – Allegation #4), OPA recommends that this allegation be Sustained.

Recommended Finding: Sustained

Named Employee #4 - Allegation #5

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report: All reports must be complete, thorough and accurate

For the same reasons as stated above (see Named Employee #1 – Allegation #5), OPA recommends that this allegation be Sustained.

Recommended Finding: Sustained

Named Employee #5 - Allegation #1

5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication

The Complainant alleged that NE#5 may have been dishonest when he told Postal Inspectors that there was no BWV or ICV relating to this incident. OPA interviewed both Postal Inspectors. Postal Inspector #1 said that he never discussed video with NE#5. Postal Inspector #2 confirmed that NE#5 told him that he believed that there was no video concerning the execution of the search warrant and that the detectives were not assigned with BWV; however, Postal Inspector #2 further explained that he did not tell NE#5 that the defense attorney informed Postal Inspector #2 of the existence of video and he did not ask NE#5 to search for video.

NE#5 did not recall being asked whether there was video relating to this incident. He did remember one of the Postal Inspectors asking him about video relating to the male resident. NE#5 thought that the Postal Inspector was seeking video concerning the male resident's work as a confidential informant and said that there was no video concerning this. He told OPA that, if asked for video concerning the officers' response to this incident, he would clearly have been able to find it and he would not have withheld it.

Without knowing exactly what was discussed between NE#5 and the Postal Inspector, OPA cannot reach a conclusive determination on this allegation. If NE#5 expressly denied that video did not exist for this incident, it could have constituted dishonesty depending on his intent. This is particularly the case given that this request for



video was made on July 28, 2020, and video logs indicated that he reviewed the other Named Employees' BWV in May of 2019. However, the evidence is insufficient in this regard and, accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #5 - Allegation #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

It was alleged that NE#5 may have been unprofessional in two main respects. First, if NE#5 deliberately or negligently failed to notify the USAO and Postal Inspectors about the video, this would have constituted a lack of professionalism. Second, Postal Inspector #1 recounted a conversation with NE#5 in which NE#5 and another detective treated him dismissively.

As discussed above, NE#5 denied intentionally failing to provide notification concerning the existence of the video. With regard to his communications with Postal Inspector #1, NE#5 recalled having a disagreement concerning whether the case should be presented to the USAO. He felt that it was not a good case because of the male resident's status as a confidential information. However, the case was referred, and NE#5 recalled being frustrated about that. That being said, he denied that he was unprofessional.

Ultimately, for the same reasons as discussed in the context of Allegation #1, there are disputes of fact and a lack of sufficient evidence to reach a determinative finding on this allegation. OPA thus recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**